1 KAREN A. OVERSTREET
   Bankruptcy Judge
2 United States Courthouse
   700 Stewart Street, Rm. 6301
3 Seattle, WA 98101-1271
   (206) 370-5330

4

5   UNITED STATES BANKRUPTCY COURT
                      WESTERN DISTRICT OF WASHINGTON
6   AT SEATTLE

7 In re
                                      Chapter 13
8 Steven C Bateman and
   Virginia T Lee,   Bankruptcy No. 07-13346
9
               Debtor.
10
   ─────────────────────────────
11 EDMUND J WOOD, Trustee,   Adversary No. 09-01345

12   Plaintiff,
   vs.
13
   Deutsche Bank National Trust
14 Company, as Trustee for Long
   Beach Mortgage Loan Trust
15 2006-1, et. al,
                                      ORDER DENYING DEFENDANTS'
16   Defendant.   MOTION FOR RECONSIDERATION

17
        This matter came before the Court on the motion of defendants
18
   Deutsche Bank National Trust Company ("Deutsche") and JPMorgan Chase
19
   Bank N.A. ("Chase") requesting the Court to reconsider its Order
20
   Granting In Part and Denying In Part Summary Judgment Motion By
21
   Lender's Processing Services, Inc. (the "Order") which was entered
22
   on the docket on March 15, 2010. The Order was entered on a motion
23
   for summary judgment by Lender's Processing Services, Inc.("LPS"),
24
   another defendant in this action.
25
        Motions for reconsideration are disfavored in this district.
26
   The local federal district court rules direct that a court should:
27
        [O]rdinarily deny such motions in the absence of a showing of
28   manifest error in the prior ruling or a showing of new facts or

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legal authority which could not have been brought to its
        attention earlier with reasonable diligence.

Civil Rule 7(h)(1), Local Rules W.D. Wash. The bankruptcy court does

not have an inherent ability to reconsider or reform its prior

orders. *In re Mulvania,* 214 B.R. 1 (9th Cir. BAP 1997).

        Deutsche and Chase (collectively, the "Defendants") seek

reconsideration on three grounds that (1) factual findings made by

the Court in the Order are incorrect; (2) the Court's conclusion

that a violation of the Washington Deed of Trust Act ("DTA") may be

the basis for a claim under the Washington Consumer Protection Act

("CPA") is wrong; and (3) any affirmative claims against the

Defendants should be limited to substantive claims not contingent

upon DTA compliance.

        The Defendants contend that the Court should not have concluded

that there is a dispute of fact over the form of the promissory note

at issue. They seek, after-the-fact, to supplement LPS's factual

presentation with a statement by their counsel that the original

note currently in the offices of Deutsche is the one true note and

the only one offered by Deutsche in this case. Deutsche will have

every opportunity in this case to present the one true note into

evidence in support of its own motion for summary judgment. The

Court's statement in the Order, however, that there "are numerous

and conflicting *copies* of the Bateman promissory note in evidence"

is correct. Unlike counsel for the Defendants, the Court has not

had the privilege of seeing and touching the "blue-ink original Note

and blue-ink original Allonge." Therefore, the Court will not

reconsider its statement in the Order as to conflicting copies of

the note.

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1   The Defendants also ask the Court to reconsider its finding

2   that there was no evidence of who the holder of the note was in May

3   of 2007 and April of 2009. They claim that the undisputed evidence

4   shows that the note was in the possession of Deutsche in 2007 and in

5   the possession of Chase in 2009. However, to support that factual

6   assertion, the Defendants rely on declarations they have submitted

7   in support of their own motion for summary judgment, which has not

8   yet been heard by the Court. *See* Docket nos. 37, 38. Similarly,

9   the Defendants point to these same declarations in support of their

10 contention that the evidence is undisputed that defendant Washington

11 Mutual Bank had authority to act as Deutsche's attorney in fact,

12 whereas the Court found insufficient evidence of that in the Order.

13 The Defendants may not supplement the factual record presented by

14 LPS in support of its motion. When the Court rules on the

15 Defendants' motion for summary judgment, it will consider the

16 evidence offered by the Defendants. That evidence may not be the

17 basis for reconsideration of an order entered against another

18 defendant.

19   The Defendants ask the Court to reconsider its finding that the

20 debtors sought to enjoin the foreclosure against their residence.

21 The defendants contend that no such action was taken by the debtors.

22 Whether the debtors or the trustee in this action did or did not

23 obtain an injunction, however, is not critical to the Court's

24 ruling. The Washington case law cited by the Court holds that if

25 the borrower/debtor fails to take action to stop the foreclosure

26 sale, by obtaining a restraining order prior to the sale, they waive

27 their rights to contest the foreclosure. The Defendants seem to be

28 arguing in this case that if they voluntarily suspended foreclosure

actions after the trustee filed a request for a temporary
restraining order, that would somehow change the Court's ruling.
How? Are the Defendants contending that the debtors and the trustee
have waived their rights to challenge the foreclosure because they
stopped pursuing a request to stay the sale that became unnecessary
because of voluntary action by the Defendants? The only case cited
by the Defendants on this point is *Brown v. Household Realty Corp.*,
146 Wn. App. 157, 164 (2008). Like the other waiver cases cited by
the Court in the Order, *Brown* stands for nothing more than the
proposition that if a borrower fails to enjoin a foreclosure sale
before the sale occurs, they waive their rights to challenge the
sale. The Defendants admit that no foreclosure sale of the property
has occurred, therefore, they cannot contend that the trustee has
waived any rights.

Finally, the Defendants challenge the Court's statement in the
Order that "a plaintiff may assert a claim under the CPA based upon
the conduct of the defendants relative to the foreclosure process."
Order, at 10:7-11. They argue that no Washington appellate court or
Federal District Court has ever permitted affirmative claims for
pre-foreclosure DTA conduct. In the Order, however, the Court
dismissed plaintiff's CPA claim against LPS so there is no reason
for the Court to reconsider any legal argument in connection with
that claim as it pertains to LPS. The Defendants attempt to preempt
plaintiff's arguments in opposition to the Defendants' motion for
summary judgment by presenting the legal arguments they presumably
have made in their own summary judgment motion in their motion for
reconsideration, to which the plaintiff is not permitted to respond.
The Order pertains to a CPA claim made by the plaintiff against LPS.

1 The Court will consider legal arguments pertaining to the CPA claim

2 against the Defendants at the hearing on their motion for summary

3 judgment and not before.

4   The Defendants claim that they were precluded from making their

5 factual and legal arguments in connection with the LPS motion for

6 summary judgment and that they should not now be prejudiced by the

7 Court's ruling on that motion. LPS' motion for summary judgment was

8 filed on January 12, 2010. Nothing prevented the Defendants from

9 responding to that motion. Instead of responding to the LPS motion,

10 the Defendants filed their own motion for summary judgment on

11 February 3, 2010. The hearing on Defendants' motion has been

12 continued numerous times since that date and has yet to be heard by

13 the Court. The Defendants act as the "Monday morning quarterback"

14 in this matter, after the Court ruled on LPS' summary judgment

15 motion, advancing both facts and law after-the-fact in support of

16 their arguments. These facts and legal arguments should have been

17 presented to the Court by the Defendants in a response to the LPS

18 motion for summary judgment.

19   NOW, THEREFORE, for the foregoing reasons, the Defendants'

20 Motion for Reconsideration of the Order is DENIED.

21

22   /// END OF ORDER ///

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25   Karen a. Oerstreet
                      United States Bankruptcy Judge
26   **(Dated as of Entered on Docket date above)**

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